SUPREME COURT OF THE UNITED STATES.

No. 113.—October Term, 1929.

The Chesapeake & Ohio Railway Company, Petitioner,
vs.
R. L. Bryant, Administrator of the Estate of M. L. Bryant, Deceased.

On Writ of Certiorari to the Supreme Court of Appeals of the State of Virginia.

[February 24, 1930.]

Mr. Justice Holmes delivered the opinion of the Court.

This is an action seeking to charge the petitioner for the death of the respondent's intestate, who was shot and killed by the foreman of a gang in which the deceased if not discharged would have worked. At the trial the petitioner demurred to the evidence, on the ground, among others, that at the time of the killing the parties were engaged in interstate commerce. The demurrer was overruled and the respondent (plaintiff) got judgment, which was affirmed by an equally divided Court. If the parties were governed by the federal Employers' Liability Act the respondent might have difficulties from the decisions of this Court. *Davis* v. *Green*, 260 U. S. 349. *Atlantic Coast Line R. R. Co.* v. *Southwell*, 275 U. S. 64. But the deceased was killed on Monday and there was some evidence that he had been discharged on the Saturday before. If so the Act of Congress did not govern and the parties were left to the State law, with which we have no concern. The writ of certiorari would not have been granted but for the impression that there was no doubt that the deceased was employed by the petitioner in interstate commerce up to the moment immediately preceding his death.

Judgment affirmed.

A true copy.

Test:

Clerk, Supreme Court, U. S.